

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish left hip osteoarthritis causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On May 15, 2018 appellant, then a 50-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed severe degenerative changes in his left hip as a result of his federal employment, including walking up and down stairs and lifting. He noted that he first became aware of his condition on April 30, 2018 and realized its relationship to his federal employment on May 1, 2018. Appellant did not stop work.

An x-ray of the left hip dated May 11, 2018 revealed severe degenerative changes with bone on bone articulation, subchondral cystic change, and sclerosis.

In a June 11, 2018 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to provide the requested information.

In a June 14, 2018 medical report, Dr. Hugh O'Flynn, a Board-certified orthopedic surgeon, noted that appellant presented for left hip pain, which he related began on April 30, 2018 when he was walking in the office and his left hip gave out. On physical examination, he noted significant discomfort during left hip flexion, internal rotation, and external rotation. Dr. O'Flynn reviewed imaging studies, which he indicated showed significant femoroacetabular joint space narrowing with osteophyte formation throughout the femoral neck and sclerotic changes throughout the acetabulum. He diagnosed left hip osteoarthritis and noted that it was not symptomatic until a recent work injury on April 30, 2018. Dr. O'Flynn recommended a left hip arthroplasty.

In a June 29, 2018 letter, Dr. O'Flynn again noted appellant's history of his left hip giving out while he was walking in the office on April 30, 2018. He opined to a reasonable degree of medical certainty that the diagnosis of left hip osteoarthritis was directly related to an April 30, 2018 work injury.

By decision dated July 20, 2018, OWCP denied appellant's claim, finding that the factual component of fact of injury had not been established. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive medical evidence. In a July 25, 2018 letter, Dr. O'Flynn reiterated that appellant's left hip condition was directly related to an April 30, 2018 work injury. He further noted that appellant would walk many miles, climb in and out of his postal vehicle, and climb up and down stairs frequently throughout the day. Dr. O'Flynn opined that these repetitive movements also contributed to appellant's diagnosis.

On August 20, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which he later amended to a request for review of the written record.

By decision dated December 14, 2018, OWCP's hearing representative affirmed the July 20, 2018 decision.

On November 18, 2019 appellant, through counsel, requested reconsideration of the December 14, 2018 decision.

In support of his request, appellant submitted an April 11, 2019 statement indicating that he worked for the employing establishment for 19 years. Each day, he spent one hour setting up his route, which involved pushing and pulling tubs of mail around the office and standing continuously with frequent bending at the hips, squatting, reaching, stooping, twisting and pivoting on his feet. Appellant alleged that he walked for six to seven hours per day, totaling five to six miles, including up and down hills, stairs and curbs. His mail satchel weighed up to 35 pounds, and packages weighed up to 70 pounds. Appellant asserted that he delivered 750 pieces of mail or packages per day, and that the amount of package deliveries had substantially increased in recent years.

On December 26, 2019 OWCP referred appellant along with a statement of accepted facts (SOAF), a set of questions, and the medical record to Dr. Christopher Rynne, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of his alleged employment-related condition.

In his February 5, 2020 medical report, Dr. Rynne reviewed the SOAF, history of injury, and the medical evidence of record. Appellant informed him that his symptoms began on April 30, 2018 while walking at work. Dr. Rynne indicated that appellant's description of his job duties was consistent with the information provided by the SOAF, and that he had previously played soccer for many years. He noted that appellant continued working until he underwent a left total hip replacement on January 22, 2019. Appellant remained out of work until he returned to light duty on April 23, 2019, followed by full duty in July 2019. On examination, he found discrepancies in hip flexion and rotation. Dr. Rynne diagnosed osteoarthritis of the left hip, and explained that wear and tear clearly contributes to the development of degenerative arthritis, but that it alone was rarely the major cause. He found that appellant's history of playing soccer would have contributed to a greater extent than his employment duties. He concluded that his condition was not directly caused, aggravated, accelerated, or precipitated by his employment.

By decision dated February 13, 2020, OWCP modified its prior decision, finding that appellant had established a valid medical diagnosis. However, the claim remained denied, as the medical evidence of record was insufficient to establish causal relationship between his diagnosed medical conditions and the accepted employment factors. It accorded the weight of the medical evidence to Dr. Rynne.

On February 27, 2020 appellant, through counsel, requested reconsideration of OWCP's February 13, 2020 decision, arguing that it committed error in failing to issue a *de novo* decision.

By decision dated July 28, 2020, OWCP denied modification of its prior decision.

On August 5, 2020 appellant, through counsel, requested reconsideration of OWCP's July 28, 2020 decision arguing that it erred in according the weight of the evidence to Dr. Rynne's February 5, 2020 second opinion evaluation.

By decision dated November 3, 2020, OWCP denied modification of the July 28, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ The opinion of the physician must be based upon a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident.⁹

³ *Supra* note 1.

⁴ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

⁸ *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁰

ANALYSIS

The Board finds that this case is not in posture for decision.

In his February 5, 2020 report, Dr. Rynne, serving as the second opinion examiner, provided contradictory opinions which require clarification. He opined that wear and tear clearly contributes to the development of degenerative arthritis. However, Dr. Rynne also concluded that appellant's condition was not directly caused, aggravated, accelerated or precipitated by his employment. As his opinion is contradictory, and because appellant need only establish that the accepted factors of employment contributed to the development of his osteoarthritis,¹¹ OWCP was required to seek clarification from Dr. Rynne. As it undertook development of the evidence by referring appellant to Dr. Rynne, it had the duty to secure an appropriate report based on an accurate factual and medical background and which is internally consistent.¹²

Accordingly, this case will be remanded to OWCP for further development of the medical evidence. On remand OWCP shall refer appellant along with an updated SOAF, a complete medical record, and a list of specific questions to Dr. Rynne, and instruct him to clarify his opinion as to whether the accepted work factors contributed to a newly diagnosed condition or caused an aggravation of a preexisting condition. Alternatively, if he is unavailable or unwilling to provide a supplemental opinion, OWCP shall refer appellant to a new second opinion physician. After this and other such further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *D.W.*, Docket No. 20-0674 (issued September 29, 2020); *V.W.*, Docket No. 19-1537 (issued May 13, 2020); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹¹ *Id.*

¹² *See A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Richard F. Williams*, 55 ECAB 343, 346 (2004).

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 29, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board